



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 7 2019

OFFICE OF
WATER

Re: Notification of Consultation and Coordination on the Establishment of the Tribal Set-Aside of the Water Infrastructure Improvements for the Nation (WIIN) Act Sections 2104 and 2105 Drinking Water Grant Programs

Dear Honorable Leader,

The U.S. Environmental Protection Agency (EPA) is initiating consultation and coordination with federally recognized Indian Tribes to obtain input on the establishment of two new tribal drinking water grant programs, as authorized by the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act. The WIIN Act addresses, supports, and improves America's drinking water infrastructure, which promotes public health and the protection of the environment. Included in the WIIN Act are three new drinking water grants, each of which will include a tribal set-aside to support access to safe drinking water in areas governed by tribes.

The three grants are as follows: section 2104 Assistance for Small and Disadvantaged Communities; section 2105 Reducing Lead in Drinking Water; and section 2107 Lead Testing in School and Child Care Program Drinking Water. The EPA is seeking your input on the questions enclosed related to the section 2104 Assistance for Small and Disadvantaged Communities and the section 2105 Reducing Lead in Drinking Water grants to help guide the implementation of the grant programs. The Agency sought tribal consultation and comment on the section 2107 Lead Testing in School and Child Care Program Drinking Water grant from September 21 to October 22, 2018.

This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (<https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes>). The EPA invites you and your designated consultation representative(s) to participate in this process. The Agency's anticipated timeline for the consultation and coordination period is expected to extend from February 20 to March 22, 2019.

Enclosed is a consultation and coordination plan that includes a description of the action under consultation and the process the EPA intends to follow, including a timeline for the consultation and coordination period and information on how you can provide input on this action. *This information is also available on EPA's Tribal Consultation Opportunities Tracking System (TCOTS) at <https://tcots.epa.gov>.*

Please do not hesitate to contact Leslie Temple, the official EPA contact person for this consultation and coordination process, by email at Temple.Leslie@epa.gov or by phone at (202) 564-4734 should you have any questions related to this action.

I look forward to hearing from you on this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. McLain", with a stylized flourish at the end.

Jennifer L. McLain, Acting Director
Office of Ground Water and Drinking Water

Enclosures

Tribal Consultation and Coordination Plan: Establishment of the Water Infrastructure Improvements for the Nation Act (WIIN Act) Sections 2104 and 2105 Grant Program Tribal Set-Aside

Background:

The Water Infrastructure Improvements for the Nation Act (WIIN Act) of 2016 addresses, supports and improves America's water resources infrastructure, critical to providing safe drinking water, economic competitiveness and domestic security. The WIIN Act authorized three new grant programs in sections 2104, 2105 and 2107, appropriated in fiscal year 2018. At this time, the EPA is seeking tribal consultation and comment on the section 2104 Assistance for Small and Disadvantaged Communities grant program and the section 2105 Reducing Lead in Drinking Water grant program. The Agency sought tribal consultation and comment on the section 2107 Lead Testing in Schools and Child Care Program Drinking Water grant program from September 21 through October 22, 2018.

Section 2104 Assistance for Small and Disadvantaged Communities:

Section 2104 of the WIIN Act directs the EPA to establish a program "to provide grants to eligible entities for use in carrying out projects or activities the primary purposes of which are to meet the requirements of the [Safe Drinking Water Act (SDWA)]."

Projects eligible for assistance include:

- Investments necessary to return a tribal public water system to compliance with the requirements of SDWA,
- Assistance to directly and primarily benefit disadvantaged tribal communities on a per household basis, or
- Programs to provide household water quality testing, including testing for unregulated contaminants.

An underserved community is defined as any political subdivision to have an inadequate system for obtaining drinking water. This can include lack of access to household drinking water or wastewater services or is served by a public water system that violates or exceeds a national primary drinking water regulation. These include a maximum contaminant level, a treatment technique, or an action level.

This grant may also provide assistance to increase technical, managerial, and financial capacity of the eligible entity receiving funding under this grant. Recipients of this grant may be required to provide a 45 percent cost-share match, which can include services, materials, supplies, or other in-kind contributions. The EPA may waive this requirement if the recipient is determined to be unable to pay or would experience significant financial hardship if required to pay the non-federal share. Recipients are also required to pay 100 percent of operations and maintenance costs associated with the project or activity.

Tribal Set-Aside

The EPA will award approximately \$400,000 for fiscal year 2018 to help tribal public water systems meet the requirements of the SDWA. The proposed tribal allotment from the \$20 million grant program

is based upon the tribal set-aside of the Drinking Water State Revolving Fund (DWSRF) allocation, which is equal to 2 percent of the total appropriation.

Eligibility

An eligible entity under this grant is:

- A public water system,
- A water system located in an area governed by an Indian Tribe, or
- A state on behalf of an underserved community

And serves a community that:

- Is determined to be a disadvantaged community under SDWA section 1452(d)(3), or
- May become disadvantaged as a result of carrying out a project, or
- Has a population under 10,000 that the Administrator determines to lack the capacity to incur the debt necessary debt to finance a project.

Priority shall be given to projects and activities that benefit underserved communities.

Section 2105 Reducing Lead in Drinking Water:

Section 2105 of the WIIN Act directs the EPA to “establish a grant program to provide assistance to eligible entities for lead reduction projects in the United States.”

This grant provides assistance to support lead reduction projects, which include:

- Replacement of publicly owned lead service lines,
- Testing, planning or other relevant activities to identify and address conditions (including corrosion control) that contribute to increased concentration of lead in drinking water, or
- Assistance to low-income home owners to replace lead service lines.

This does not include assistance for partial service line replacement if the remaining portion delivering drinking water to a home contains a lead service line.

Eligible entities must identify the source of the lead and the means by which the proposed lead reduction project would meaningfully reduce the concentration of lead in the water. Priority is given to disadvantaged communities with an action level exceedance in the last three years or to address lead levels in a school, daycare, or other facility that primarily serves children.

This grant requires a cost-share match of up to 20 percent of the total project cost. The cost-share match may be reduced or eliminated with a waiver for reasons of affordability.

Tribal Set-Aside

The EPA will award approximately \$1 million for fiscal year 2018 to help tribal water systems reduce lead in drinking water. The proposed tribal allotment from the \$10 million grant program is based upon the estimated need to reduce lead in drinking water in tribal water systems.

Eligibility

Eligible entities under this grant include:

- Community water systems (CWSs),

- Water systems in areas governed by Indian Tribes,
- Non-transient non-community water systems (NTNCWS),
- Qualified non-governmental organizations servicing a public water system, and
- Municipalities or states, interstate or intermunicipal agencies.

Potential Impacts to Tribes

The EPA will award a total of \$30 million dollars nationwide to support compliance with SDWA requirements and the reduction of lead in drinking water, thus protecting public health. An estimated \$1.4 million will be awarded through tribal set-asides to support activities to meet the requirements of SDWA and reduce lead in drinking water in systems serving tribal populations.

Opportunities for Tribes to Participate

Through this consultation and coordination process, the EPA seeks to better understand tribal priorities with respect to the WIIN Act Assistance to Small and Disadvantaged Communities grant program. Specifically, the EPA seeks to understand tribal priorities in the following areas:

1. Factors the EPA should consider in the allocation formula to allocate the funds to serve the communities in greatest need. Examples include median household income or remoteness of a community.
2. Tribes' prioritization of implementation to support infrastructure activities or training and technical assistance activities.

Additionally, the EPA seeks to better understand tribal priorities with respect to the WIIN Act Reducing Lead in Drinking Water grant program. Specifically, the EPA seeks to understand tribal priorities in the following areas:

1. Factors the EPA should consider in prioritizing infrastructure projects to be funded through this opportunity. Examples include: population served (e.g. schools and child care facilities serving young children); the presence of an action level exceedance in the previous 3 years; or the age of the infrastructure.

The tribal consultation and coordination process table below lays out the process and timeline for government-to-government consultation and coordination. The combined goal for these efforts is to ensure there is sufficient information for tribal officials to make informed decisions about consultation and to understand how to provide informed input.

The tribal consultation letter, consultation and coordination plan, and related consultation information and materials are available online via the EPA's *Tribal Consultation Opportunities Tracking System (TCOTS)*, located at: <https://tcots.epa.gov>.

At any point in the tribal consultation process, tribes may submit written comments to:

1. Email: Temple.Leslie@epa.gov

2. Mail: U.S. Environmental Protection Agency, Office of Water, Office of Ground Water and Drinking Water, Mail Code: 4606M, 1200 Pennsylvania Ave. NW, Washington, DC 20460, Attention: EPA WIIN Act Grant Program Tribal Consultation.

To assist in providing feedback, tribes may also use the feedback collection template (enclosed and also available via the TCOTS website located at: <https://tcots.epa.gov>), to collect information on the WIIN grant tribal set-aside program for the Assistance for Small and Disadvantaged Communities and Reducing Lead in Drinking Water grants.

As noted below, the EPA intends to hold two informational webinars for tribal governments on March 7, 2019, and March 13, 2019, from 2:00 PM to 3:00 PM Eastern Time. The webinars will provide an overview of the WIIN Act grants and answer any questions. To access the webinar, please visit <https://epawebconferencing.acms.com/wiingranttribalconsultation/>.

Tribal Consultation and Coordination Process and Timeline

Date	Event	Contact Information
February 20, 2019	Tribal Consultation period begins	EPA Contact: Leslie Temple
March 6, 2019	Informational Webinar for Tribes	2:00 – 3:00 PM Eastern Time Join the webinar via: https://epawebconferencing.acms.com/wiingranttribalconsultation/ For audio, please call: 202-991-0477; conference ID: 5277657
March 14, 2019	Informational Webinar for Tribes	2:00 – 3:00 PM Eastern Time Join the webinar via: https://epawebconferencing.acms.com/wiingranttribalconsultation/ For audio, please call: 202-991-0477; conference ID: 5277657
March 22, 2019	Tribal Consultation period ends	EPA Contact: Leslie Temple